

Attachment A

This page intentionally left blank.

**AMENDMENT NO. 1
TO OPERATION AND MANAGEMENT AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
URBAN PARKS CONCESSIONAIRES, DBA MONTEREY LAKES RECREATION
COMPANY**

THIS AMENDMENT NO. 1 to the Operation and Management Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "COUNTY") and Urban Parks Concessionaires, dba Monterey Lakes Recreation Company (hereinafter, "CONTRACTOR") is hereby entered into between the County and the CONTRACTOR (collectively, the "Parties") and effective as of the last date opposite the respective signatures below.

WHEREAS, CONTRACTOR entered into an Agreement with COUNTY on July 29, 2019 (hereinafter, "Agreement") to provide facility management services on behalf of the COUNTY for the area of operations under COUNTY control at Lake Nacimiento ("Park"), and other services as described in the Agreement;

WHEREAS, CONTRACTOR wishes to operate a fleet of CONTRACTOR-owned rental vessels (Rental Vessels) at the Park;

WHEREAS, the Parties agree that such CONTRACTOR Rental Vessels will bring additional visitors and revenue to the Park, and is a mutually beneficial addition to Park operations; and

WHEREAS, the Parties wish to amend the Agreement to incorporate terms and conditions for the oversight and operation of CONTRACTOR Rental Vessels.

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

1. Amend the second sentence of Section 4., "Exhibits", to add "Exhibit E: CONTRACTOR Rental Vessels.
2. Exhibit E – CONTRACTOR Rental Vessel Fleet, attached hereto, is incorporated into the Agreement.
3. Amend Paragraph 10.2 and Table 10 – Rate Approvals in Section 10. "Public Access, Reservations and Fees to read as follows:

10.2. All rates and charges to the public by CONTRACTOR for Park services will be reasonable and appropriate for the type and quality of facilities, equipment and products provided. Rental rates for the CONTRACTOR Rental Vessels as described in Exhibit E shall be set by the CONTRACTOR and are not subject to County approval. Required approvals for various rate and fee types are shown in Table 10 below:

Table 10 – Rate Approvals		
Director and Board of Supervisors Approval	Director or Designee Approval	CONTRACTOR Approval
Entry Fees Reservation Fees Facility use fees (boat launch, rentals, marina slip rates, etc.)	Retail Food and Beverage Special Event/Promotional Fees: - User Fees - Assignment of Cost to Permittee - Promotional Event Fees - Special Discount Programs and Promotions	CONTRACTOR Rental Vessels

4. Amend Paragraph 10.3 in Section 10. “Public Access, Reservations and Fees to read as follows:

10.3 CONTRACTOR shall submit all proposed rates and pricing changes subject to COUNTY approval for review and approval by the PWFP Director or designee as part of the Baseline update as detailed in Section 26.

5. Amend the first sentence in Section 20. “Profit and Loss Statement (P&L)”, to read as follows:

20. Profit and Loss Statement (P&L). The P&L, as audited and approved by the County, will reflect all CONTRACTOR revenue, and expenses paid in the normal course of business such as all personnel, supplies, materials and equipment needed for the operation of the Park, excluding any Additional Services as defined under Section 14., and CONTRACTOR Rental Vessels revenue and expenses as described in Paragraph 20.4 and in Exhibit E.

6. Amend Table 20 – Direct Operating Costs to read as follows:

Table 20 – Direct Operating Costs <i>(Excluding all CONTRACTOR Rental Vessel costs as described in 20.4 below and Exhibit E)</i>
Costs for Staff Working at the Park
Salaries, Benefits and Employee Welfare
Insurance Health
Workers Comp
Payroll Service Fees
Payroll Taxes
Additional Insurance purchased to meet Agreement requirements.
Audit Expenses per Section 22
Marketing Expense
Property Taxes, Assessments and Fees
Park Legal Fees
Association Fees (on behalf of Park)
Third-Party Contracts (Acting as Designated Agent)
Cost of Goods Sold
Maintenance (Emergency and Scheduled) as defined in Exhibit A
Direct vehicle expenses under the Vehicle Lease Agreement (Exhibit B)

7. Add Paragraph 20.4 to Section 20. “Profit and Loss Statement (P&L)” to read as follows:

20.4 CONTRACTOR Rental Vessels. CONTRACTOR shall calculate a Rental Vessel Staff Rate equal to one (1) hour average salary and benefits for CONTRACTOR’s Marina staff. The Rental Vessel Staff Rate will be multiplied by the number of Rental Vessel rentals for each month, and the resulting amount deducted from the monthly P&L Direct Operating Costs. No costs associated with CONTRACTOR rental vessels, including but not limited to, the purchase, repairs and maintenance, and insurance, shall be charged to the COUNTY.

8. Amend Section 21. “Compensation” to read as follows:

21. Compensation. Parties agree to settle the CONTRACTOR Operating Account Surplus or Deficit on a monthly basis, based on CONTRACTOR’s P&L as reviewed and approved by the COUNTY. If a surplus, CONTRACTOR shall reimburse COUNTY. If a deficit, COUNTY shall reimburse CONTRACTOR. In addition, COUNTY shall pay CONTRACTOR a Fixed Management Fee of \$300,000 annually, paid in monthly installments of \$25,000. The Fixed Management Fee shall be adjusted at the beginning of each Fiscal Year in accordance with the prior 12-month average (July through June) Consumer Price Index (CPI) adjustment for the San Francisco/Hayward area. Payment shall be made within thirty (30) days of the end of each calendar month. All revenue and expenses related to the CONTRACTOR Rental Vessels shall be recorded in separate financial statements from the other revenue and expenses described in this Agreement. The COUNTY’s compensation from the CONTRACTOR Rental Vessels is described in Exhibit E.

9. Amend Paragraph 21.2.2. to Section 21. “Compensation” to read as follows:

21.2.2. Gross Income means all COUNTY and CONTRACTOR operating revenue from ordinary business activities and specifically excludes:

- 21.2.2.1. Sale of Capital Assets.
- 21.2.2.2. Interest Earnings.
- 21.2.2.3. Revenue from the CONTRACTOR Rental Vessels.

10. Amend Table 21.b – Excluded Costs to read as follows:

Table 21.b – Excluded Costs
Annual direct salary and benefits in excess of \$50,000 for CONTRACTOR Vice President assigned to oversee the Park
CONTRACTOR charges covering any corporate or central office overhead or staff, other than legal fees for services provided directly charged to the Park as allowed in Table 20.
COUNTY administrative staff costs and Ranger surface patrols not covered under Table 21.a
COUNTY insurance costs
Depreciation
Extraordinary items and Capital expenses as defined under Exhibit A.
Interest on Debt

All expenses related to CONTRACTOR Rental Vessels

11. In all places in the Agreement, any reference to “Resource Management Agency” is replaced with “Public Works, Facilities & Parks”. Any reference to “RMA” is replaced with “PWFP”. Any reference to “Deputy Director” is replaced by “Assistant Director”
12. All other terms and conditions of the Agreement, including all Exhibits thereto, remain unchanged and in full force.
13. This Amendment No. 1 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
14. This Amendment may be executed in several counterparts and as so executed shall constitute one and the same agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart. Electronic copies shall be enforceable as originals.
15. The parties to the Agreement consent to the use of electronic signatures via DocuSign to execute this Agreement. The parties understand and agree that the legality of electronic signatures is governed by state and federal law, 15 U.S.C. section 7001 et seq.; California Government Code Section 16.5; and California Civil Code section 1633.1 et seq. Pursuant to said state and federal law as may be amended from time to time, the parties to this Agreement hereby authenticate and execute this Agreement, and all Exhibits to this Agreement, with their respective electronic signatures, including any and all scanned signatures in portable document format (PDF). This Agreement, including all Exhibits is the entire agreement between the parties relating to the Event and may only be modified by written agreement signed by both parties. Each person signing below represents to the other party that they are authorized to sign this Agreement and bind their respective companies to fulfill the obligations contained herein. Nothing in this Agreement is intended to create any rights in or confer any benefits upon any person or entity other than the parties to this Agreement.
16. If any provision of this Amendment, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of Amendment, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.
17. The recitals to this Amendment No. 1 are incorporated into the Agreement and this Amendment No. 1.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 1 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

CONTRACTOR*

By: _____
Contracts/Purchasing Officer

Urban Parks Concessionaires, dba
Monterey Lakes Recreation Company

Contractor's Business Name

Date: _____

By: Kris Koeberer
DocuSigned by: JUAU222714D47487
(Signature of Chair, President or Vice President)

**Approved as to Form
Office of the County Counsel
Leslie J. Girard, County Counsel**

Its: Kris Koeberer President
(Print Name and Title)

By: Kristi Markey
DocuSigned by: C21D52A9D63041C...
Kristi Markey
Deputy County Counsel

Date: 1/7/2022 | 4:29 PM PST

Date: 1/11/2022 | 11:10 AM PST

By: Richard Bayer
DocuSigned by: 50BCA80CF7B04AD
(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)

Its: Richard Bayer CFO
(Print Name and Title)

Approved as to Fiscal Provisions

By: Gary Giboney
DocuSigned by: D3834BFEC1D8449...
Auditor/Controller

Date: 1/10/2022 | 8:43 AM PST

Date: _____

**Approved as to Indemnity and Insurance Provisions
Office of the County Counsel
Leslie J. Girard, County Counsel**

By: _____
Danielle P. Mancuso
Risk Manager

Date: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

Exhibit E – CONTRACTOR Rental Vessels

Exhibit E

To the Operations and Management Agreement by and between
County of Monterey, hereinafter referred to as “COUNTY”

and

Urban Parks Concessionaires, dba Monterey Lakes Recreation Company, hereinafter
referred to as “CONTRACTOR”

1. **General Description.** CONTRACTOR shall provide, operate and maintain, at its own expense, a fleet of rental vessels (Rental Vessels) for use at Lake Nacimiento (“Park”).
2. **Finances and Accounting.** CONTRACTOR shall keep Rental Vessel financial records separate from all other Park operations. Revenue and expenses for Rental Vessels shall not be included in any Park operations financial records or financial calculations.
 - 2.1. CONTRACTOR expenses related to Rental Vessel operations, including but not limited to maintenance, repairs, insurance, etc. are not eligible for County reimbursement.
 - 2.1.1. All invoices for work performed on Rental Vessels shall include the associated Hull Identification Number (HIN) or other identifier to clearly distinguish Rental Vessel expenses from Park operations expenses.
 - 2.2. CONTRACTOR shall calculate a Rental Vessel Staff Rate equal to one (1) hour average salary and benefits for CONTRACTOR’s Marina staff. The Rental Vessel Staff Rate will be multiplied by the number of Rental Vessel rentals for each month, and the resulting amount deducted from the monthly P&L Direct Operating Costs. This deduction will account for CONTRACTOR staff time supporting the Rental Vessel operations.
 - 2.2.1. The calculation dollar amount shall be updated as needed to reflect current staffing costs.
 - 2.2.2. The County shall have the right to review CONTRACTOR staff costs and Rental Vessel transactions to verify the calculation.
 - 2.3. CONTRACTOR shall maintain all required insurance applicable to the Rental Vessels in accordance with the terms of the Agreement. Insurance costs for the Rental Vessels shall not be included in the Park operations Direct Operating Costs.
 - 2.4. Rental Vessel revenue is defined as the rental fees charged, and damage waivers sold for CONTRACTOR Rental Vessels. All other revenue shall be reflected in the Park financial statements as described Agreement Section II – Finances and Accounting.
 - 2.5. CONTRACTOR shall pay County fifteen percent (15%) of monthly gross Rental Vessel rental fees, to be paid monthly within thirty (30) days of the end of each month, subject to County audit and approval. Revenue from Rental Vessel damage waivers is excluded from the 15% revenue calculation.
3. **Rental Vessel Inventory.** CONTRACTOR shall maintain an inventory of Rental Vessels and provide a current inventory to COUNTY upon request.

Exhibit E – CONTRACTOR Rental Vessels

- 3.1. Inventory shall record, at a minimum, the vessel make, model, HIN, year of manufacture and date of purchase.
4. **Other Terms and Conditions.** All other Agreement terms and conditions are applicable to the CONTRACTOR Rental Vessels.